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Federal Communications Commission
Office of Secretary

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Telecommunications Act of 1996:	)	
	)	CC Docket No. 96-150
Accounting Safeguards Under the Telecommunications Act of 1996	)	
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REPLY COMMENTS OF BELL ATLANTIC

The Bell Atlantic Telephone Companies

Edward D. Young, III
Michael E. Glover
Of Counsel

Lawrence W. Katz

1320 North Court House Road
Eighth Floor
Arlington, Virginia 22201
(703) 974-4862

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REPLY COMMENTS OF BELL ATLANTIC[1]

I. Introduction and Summary

The comments filed in this proceeding demonstrate that there will be no public benefit from retaining or increasing burdensome and intrusive accounting requirements, especially for any local exchange carriers ("LECs") that are under pure price caps. Pure price caps eliminate any realistic possibility that these companies might subsidize any of their non-regulated or interLATA services with revenues from exchange services or exchange access. The claims of some parties that such subsidization is still possible cannot stand up to analysis. Their proposals would result in anticompetitive and, in some instances, unlawful requirements being imposed on one segment of a competitive industry.

[1] The Bell Atlantic telephone companies ("Bell Atlantic") are Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; and Bell Atlantic-West Virginia, Inc.

Not one of the parties urging more regulation has met the required "heavy" burden of persuasion that the Notice imposed.[2] Moreover, not one has shown how the ratepayers' interests, as contrasted with their own private interest as a competitor, would be served by handicapping the ability of a handful of new market participants to compete against the existing incumbents, such as AT&T, MCI and Sprint. All of these incumbents seek regulatory protection against meaningful new entry by asking for layer-upon-layer of new regulatory requirements, many in contravention of the express provisions of the Act and the clear intent of Congress. Instead, the Commission should weigh proposals for new regulations based upon whether intrusive regulation is needed to prevent "any plausible likelihood of significant adverse impact on the interstate ratepayer."[3] This test also is consistent with Congressional policy in "provid[ing] for a pro-competitive, de-regulatory national policy framework"[4] and in requiring the Commission to forbear from enforcing any regulation or statutory provision that, ***inter alia***, is unnecessary "for the protection of consumers."[5] It is also consistent with the heavy burden that the Notice places on those seeking increased regulation.

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[2] ***Notice of Proposed Rulemaking***, FCC 96-309, at ¶ 12 (rel. July 18, 1996) ("Notice").

[3] ***See*** GTE at 10.

[4] H.R. Conf. Rep. No. 458, 104th Cong., 2d Sess. at 113 (1996) ("Conference Report"). LDDS WorldCom ("LDDS") conveniently ignores this clear expression of Congressional intent when it claims that the Act contains no mandate to minimize the regulatory burden. LDDS at 8.

[5] 47 U.S.C. § 160(a)(2).

II. No Party Has Justified Cost Allocation Rules for Pure Price Cap Companies.

A substantial number of parties demonstrate that price cap arrangements without sharing, i.e., "pure" price caps, eliminate the opportunity or incentive to cross-subsidize other services. Some commenters, however, particularly entrenched interLATA telecommunications carriers, claim otherwise. This latter view is not only contrary to the opinions of a host of economists,[6] it is inconsistent with views expressed by the Commission's own Chief Economist[7] and with the Commission's own findings in this proceeding.[8] Yet the parties simply assert that the Bell companies' market power or their substantial share of the market for existing services justifies intrusive regulation.[9] There is no validity to this claim, because, regardless of whether or not the Bell companies possess market power for exchange access services, if their rates cannot be increased to recoup any costs misallocated to those services, there is no incentive to misallocate costs in the first place. Therefore, there is no reason for the Commission to regulate the allocation of such costs for price cap companies.

MCI claims, however, that the Bell companies still have an incentive to cross-subsidize, because they annually may elect whether or not to adopt a productivity factor that includes sharing, and because the "X-factor" each year relies in part on the past year's rate of return.[10] In the first place, this indirect link is far too attenuated for a company to successfully

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[6] ***See*** SBC at 7-9 and Exh. A, Bell Atlantic at 4-6.

[7] ***Id.***

[8] Notice at ¶ 121.

[9] ***E.g.***, MCI at 4, GSA at 7.

[10] MCI at 5-6.

recoup the massive losses that would have to be incurred over an extended period in order to have any impact on the entrenched incumbents. In addition, if the Commission adopts, as it should, a permanent pure price cap mechanism such as the total factor productivity measurement that the United States Telephone Association and Bell Atlantic proposed in the price cap reform proceeding, no annual election will occur.[11] Instead, the annual productivity adjustment would be based not on a single company's return, but on the prior year's aggregate results of the LEC industry. This aggregation of LECs' performance effectively eliminates the already attenuated connection between a single company's performance and its productivity factor. By doing so, it also effectively eliminates any incentive or ability to cross-subsidize.

The New York State Department of Public Service ("NYDPS") points out that cost information will be needed to develop new services under Section 252(d) of the 1996 Act, such as unbundled network elements, and to calculate universal service subsidies pursuant to Section 254.[12] But under the Commission's order implementing Section 251, the pricing of new services and unbundled network elements will not be based on Part 64,[13] and resale rates are based upon existing tariffed rates, less avoided costs.[14] As for universal service, no party to the

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[11] ***See*** Dr. Laurits R. Christensen, Treatment of LEC Investments in Joint-Use Broadband Facilities Under a Price Cap Regime at 2, United States Telephone Association Ex Parte filing in CC Docket Nos. 96-112 and 94-1 (filed July 17, 1996).

[12] NYDPS at 10-11.

[13] Part 64 cost allocations are based on fully distributed costs, not forward-looking incremental costs. ***See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order***, CC Docket No. 96-98, FCC 96-325 at ¶¶674-703 (rel. Aug. 8, 1996) ("Interconnection Order").

[14] ***Id.*** at ¶¶ 907-34.

pending proceeding to implement Section 254 has proposed a mechanism that is dependent on Part 64 cost allocations.[15] Therefore, the factors raised by the NYDPS do not justify regulating cost allocations.

LDDS, on the other hand, concedes that price cap rates are not tied to costs but claims that the Commission's rules should be revised to tie those rates closer to cost. This, LDDS argues, justifies retaining the cost allocation rules, which will be needed to determine costs under LDDS's desired revisions to price caps.[16] LDDS's dislike of the Commission's price cap structure, however, is scant reason to retain rules that are unnecessary under that structure. Moreover, the nationwide trend, both at the Commission and in the states, is to move away from the archaic cost-based rate of return regulation in favor of price cap regulation.

Finally, Sprint argues that the Commission's price cap formulation still allows exogenous treatment of certain costs, and that the possibility of exogenous cost adjustments provides opportunities to manipulate cost allocations.[17] Under the Commission's rules, however, exogenous costs are limited to those that are outside of the LEC's control.[18] As a result, anything within the control of the carrier, including new investment, cannot affect rates. If the costs are outside of the LEC's control, they cannot provide the basis of an allocation decision.

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[15] ***See Federal-State Joint Board on Universal Service, Notice of Proposed Rulemaking*** CC Docket No. 96-45, FCC 96-93 (rel. Mar. 8, 1996).

[16] LDDS at 15 and 32.

[17] Sprint at 17-18.

[18] ***See Policy and Rules Concerning Rates for Dominant Carriers***, 5 FCC Rcd 6786, 6807 (1990) ("Exogenous costs are in general those costs that are triggered by administrative, legislative or judicial action beyond the control of the carriers."); 47 C.F.R. § 61.44(c).

III. Proposals for Increased Regulation Violate the 1996 Act.

Several of the proposals for increased regulation are inconsistent with express provisions of the 1996 Act or with statements of Congressional intent. Besides violating the Act, not one of the proposals meets the "heavy burden" imposed on those seeking increased regulation,[19] nor are they designed to prevent harm to consumers, as opposed to protecting individual competitors. All of the proposals are designed to make it more difficult for the Bell companies' new interLATA services, which have a zero market share, to compete with the entrenched incumbents that dominate the market, such as AT&T, MCI and Sprint. Therefore, even if the proposals were lawful, which they are not, they represent bad policy.

- Audit Issues

  AT&T proposes annual compliance audits under Section 272, claiming that the statute requires audits "at least" biennially.[20] The "at least" language is a figment of AT&T's imagination. It appears nowhere in the audit section of the Act which prescribes a "joint Federal/State audit every two years."[21] Congress balanced the costs of such audits and found that biennial audits are sufficient to ensure compliance with the provisions of Section 272, AT&T's arguments to the contrary notwithstanding.

[19] Notice at ¶ 12.

[20] AT&T at 17.

[21] 47 U.S.C. § 272(d)(1).

Several parties urge the Commission to read the audit provisions of Section 272 as allowing the Commission to order intrusive examination of the books of the Bell companies' separate interLATA affiliates.[22] The Act, however, specifies that the audits are designed to examine whether the company has complied with the requirements of Section 272.[23] For that purpose, the only accounts and records that the auditor needs to examine are those "necessary to verify transactions ... that are relevant to the specific activities permitted under this section and that are necessary for the regulation of rates."[24] There is no statutory justification for requiring the affiliate to retain, and the auditor to examine, additional records that do not relate to these limited matters, as the parties assert. The audit that the parties urge the Commission to prescribe would amount to regulating the affiliate, and that, as discussed above, is inconsistent with the Act and with the public interest.

NARUC's proposal for the terms of the biennial audit go well beyond the letter and intent of the Act. NARUC asks that a joint federal/state audit team review the terms of the Bell companies' solicitations of proposals from potential auditors, and the proposals themselves, for compliance with the solicitation

[22] ***See, e.g.***, AT&T at 17-18, LDDS at 30-31.

[23] 47 U.S.C. § 272(d)(1).

[24] 47 U.S.C. § 272(d)(3)(A). As discussed below, there is no justification for the Commission to regulate the rates or earnings of the Bell companies' interLATA telecommunications services and, therefore, no need for the audit to address those rates or earnings.

documents; evaluate the auditors' work plans and progress reports; and examine the audit work papers "to determine if they meet professional standards."[25] In short, NARUC seeks to become intimately involved in the day-to-day conduct of the independent audit. These proposals go well beyond the provisions of the Act, which require that the Bell companies "obtain and pay for" an independent audit and that the auditor "submit the results of the audit" to the Commission and applicable state commissions.[26]

- Separated Affiliate for Telemessaging

MCI and VoiceTel urge the Commission to require separate subsidiaries for all telemessaging services.[27] As Bell Atlantic showed in the Section 271 and 272 non-accounting safeguards proceeding, the statute does not change the intraLATA nature of the type of existing telemessaging services.[28] The statute only requires that interLATA information services be offered through a separate affiliate.[29] Moreover, even if existing telemessaging services were interLATA, which they are not, the Act grandfathers such services from the separate affiliate

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[25] NARUC at 11.

[26] 47 U.S.C. § 272(d)(1) and (2).

[27] MCI at 38, VoiceTel at 12-13.

[28] ***Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, As Amended***, CC Docket No. 96-149 ("Non-Accounting Safeguards Proceeding"), Reply Comments of Bell Atlantic at 15-18 (filed Aug. 30, 1996).

[29] 47 U.S.C. § 272(a)(2)(C).

requirements.[30] In either case, there is no basis for requiring all telemessaging services to be structurally separated.[31]

- Mandatory Tariffing of Exchange Services

AT&T asks the Commission to require that the Bell companies' interLATA affiliate be required to take all exchange services that they use under tariff, regardless of whether those services have been detariffed when offered generally to the public.[32] Nothing in the 1996 Act, however, gives the Commission jurisdiction to determine whether or not exchange services should be subject to tariff. Pursuant to Sections 2(b) and 221(b) of the 1934 Act, provisions which were not changed by the 1996 Act, regulation of such services rests exclusively within the purview of the states.[33] The Act requires that exchange and exchange access services be made available to the affiliate at prices no lower than those charged to non-affiliates,[34] but it does not give this Commission authority to

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[30] ***See*** 47 U.S.C. § 271(f).

[31] The general issue of nonstructural safeguards for enhanced services is pending in the Computer Inquiry III remand proceeding, in which the record supports only one conclusion: the integrated provision of basic and enhanced services, including telemessaging services, has well served the public interest for the past decade and should be retained. ***See Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services***, CC Docket No. 95-20, Comments of Bell Atlantic (filed Apr. 7, 1995).

[32] AT&T at 16-17.

[33] 47 U.S.C. §§ 152(b)), 221(b).

[34] 47 U.S.C. § 272(e)(3).

require that those services be subject to tariff if the applicable state commission decides otherwise.

- Joint Marketing

CompTel asks the Commission to prohibit the Bell companies and their separate affiliates from engaging in joint marketing.[35] This issue has been addressed at length in other pending proceedings.[36] Here, CompTel again ignores the express provision in the Act allowing the affiliate to market the Bell company's services, so long as the Bell company allows its affiliate's competitors to sell telephone exchange services,[37] and permitting the Bell company to market the affiliate's interLATA services once the Bell company obtains in-region interLATA relief.[38] As Bell Atlantic demonstrated in its comments in the Non-Accounting Safeguards Proceeding, Congress recognized the public benefits to be derived from the ability to obtain "one-stop shopping" of local and interLATA services, benefits that CompTel wants to deny.

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[35] CompTel at 15, 18.

[36] ***See, e.g.***, Non-Accounting Safeguards Proceeding, Comments of Bell Atlantic at 8-9 (filed Aug. 15, 1996).

[37] 47 U.S.C. § 272(g)(1).

[38] 47 U.S.C. § 272(g)(2).

- Regulate the Separate Affiliate's Prices and Profits

Several parties want the Commission to regulate the prices charged by the separated interLATA affiliate, or restrict the earnings of that affiliate.[39] The separate interLATA telecommunications affiliate will enter the marketplace with no market share and no customers, competing against the incumbent interexchange carriers, such as AT&T, MCI, and Sprint. As Bell Atlantic recently showed, under no circumstances could its new interLATA operations be in a position to exercise market power in the interLATA marketplace, and, therefore, they must be treated as non-dominant.[40] Regulation of new entrants' rates or profits, but not those of the entrenched incumbents, would turn regulation on its head -- regulate only the entities just entering the market to prevent them from competing with unregulated incumbents. Such an approach would restrict the public's competitive choices but provide no benefit to the interstate customer. It is also squarely at odds with the deregulatory thrust of the Act,[41] and with the mandates imposed on the Commission to eliminate unnecessary regulation and to forbear from exercising authority where such forbearance will enhance competition.[42]

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[39] ***E.g.*** MCI at 27-28, LDDS at 29, AT&T at 17.

[40] Non-Accounting Safeguards Proceeding, Comments of Bell Atlantic at 11-20 (filed Aug. 15, 1996).

[41] Conference Report at 113.

[42] 47 U.S.C. § 161; 47 U.S.C. § 160(b).

- Collocation for Enhanced Service Providers

Finally, the Association of Telemessaging Services International ("ATSI") asks the Commission to require the Bell companies to provide collocation to enhanced service providers on a physical, virtual, and meet point basis.[43] This issue is not relevant to this proceeding, which addresses accounting issues. Moreover, the Commission has already denied that request. In the Interconnection Order, the Commission addressed, and denied, the same request made by the same party.[44] It is inappropriate for ATSI to seek reconsideration of that finding in this collateral proceeding. Moreover, grant of ATSI's request would be unlawful. The Act specifies that incumbent LECs must provide collocation of equipment "necessary for interconnection or access to unbundled network elements,"[45] not for enhanced service equipment. That provision is the sole statutory authority for the Commission to order collocation. A collocation requirement that extends beyond this narrow authority would be an unlawful taking of the LEC's property.[46]

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[43] ATSI at 11.

[44] Interconnection Order at ¶ 581.

[45] 47 U.S.C. § 251(c)(6).

[46] ***See Bell Atlantic v. FCC***, 24 F.3d 1441 (D.C.Cir. 1994).

IV. Conclusion

Accordingly, there is no justification for applying the Part 64 cost allocation rules to the Bell companies' separate affiliates, or to their unseparated operations that are established under the 1996 Act. There is certainly no basis for applying the more onerous and intrusive regulatory burdens which the competitors ask the Commission to impose.

Respectfully Submitted,

The Bell Atlantic Telephone Companies

By their Attorney

Lawrence W. Katz

1320 North Court House Road
Eighth Floor
Arlington, Virginia 22201
(703) 974-4862

Edward D. Young, III
Michael E. Glover
Of Counsel

September 10, 1996

<u>CERTIFICATE OF SERVICE</u>

I hereby certify that on this 10th day of September, 1996 a copy of the foregoing "Reply Comments of Bell Atlantic" was sent by first class mail, postage prepaid, to the parties on the attached list.

Tracey DeVaux

Tracey DeVaux

* Via hand delivery.

Ernestine Creech*
Common Carrier Bureau
Accounting and Audits Division
Fedreal Communications Commission
2000 L Street, NW
Suite 257
Washington, DC 20554
(Hard copy and diskette version)

ITS, Inc.
2100 M Street, NW
Suite 140
Washington, DC 20037